

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

No.	CV 24-03467-CAS (AS)	Date	September 25, 2024
Title	<i>Tavo Simmons v. United States of America. et. al.,</i>		

Present: The Honorable	Alka Sagar, United States Magistrate Judge
Alma Felix	Not reported
Deputy Clerk	Court Reporter / Recorder
Attorney Present for Petitioner:	Attorney Present for Respondent:
Not present	Not present

Proceedings (In Chambers): (SECOND) ORDER TO SHOW CAUSE

On July 24, 2024, the Court issued an Order to Show Cause (“OSC”) directing Petitioner to show cause no later than August 14, 2024, why this action should not be dismissed without prejudice for lack of jurisdiction. (Dkt. No. 3). The Court’s Order explained that the habeas petition filed by Petitioner, pursuant to 28 U.S.C. § 2241, appeared to be challenging the sentence and judgment imposed in Petitioner’s criminal case in the United States District Court for the Eastern District of Kentucky, Case No. CR 17-0030-DLB, and that such challenge must ordinarily proceed by a motion that is filed in the sentencing court pursuant to 28 U.S.C. §2255. (Id.). Accordingly, Petitioner was informed that if he wished to file a section 2255 motion in the sentencing court or otherwise no longer pursue this action, he could request a voluntary dismissal of this action pursuant to Fed.R.Civ.P. 41(a) and then file a section 2255 motion directly with the sentencing court. Id. Petitioner was expressly “cautioned that the failure to timely file a response to [the Court’s] Order to Show Cause and/or show good cause may result in a recommendation that this action be dismissed for lack of jurisdiction, for failure to comply with the Court’s Order, and/or for failure to prosecute.” Id.

On August 13, 2024, Petitioner filed a complaint which was construed as a new civil rights case and filed under case number CV 24-7092-CAS (AS). (Dkt. Nos. 4, 6). However, Petitioner has failed to respond to the Court’s OSC, request an extension of time to do so, or otherwise communicate with the Court regarding the petition filed in this action.

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Accordingly, Petitioner is once again **ORDERED TO SHOW CAUSE, in writing, no later than October 16, 2024**, why this action should not be dismissed without prejudice for lack of jurisdiction, failure to comply with the Court's order and/or for failure to prosecute.

This Order will be discharged upon the filing of a response and/or declaration under penalty of perjury stating why he is unable to do so.

If Petitioner no longer wishes to pursue this action, he may request a voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1). A notice of dismissal form is attached for Petitioner's convenience. Petitioner is again warned that a failure to timely respond to this Order will result in a recommendation that this action be dismissed with prejudice under Federal Rule of Civil Procedure 41(b) for failure to prosecute and obey court orders.

IT IS SO ORDERED.

cc: Christina A. Snyder
United States District Judge

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Initials of AF
Preparer
